

**STATE OF MINNESOTA
PROFESSIONAL AND TECHNICAL SERVICES CONTRACT**

This Contract is between the State of Minnesota, acting through its Commissioner of Commerce ("State") and Maximus, Inc. a Virginia corporation with its principal place of business at 1891 Metro Center Dr. Reston, VA ("Contractor").

Recitals

1. Under Minnesota Statutes section 15.061 the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of assistance in the development and maintenance of an electronic information system which functions as a comparison, enrollment and facilitation tool for provision of health care coverage to individuals and employees of small businesses.
3. The Contractor represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of the State.

Contract

1 Definitions

The following definitions are applicable throughout this Contract, including any exhibits or appendices that may be incorporated by reference into this Contract.

"ACA" means Public Law 111-148, also known as the Patient Protection and Affordable Care Act of 2010, as amended by Public Law 111-152.

"APTC" means Advance Payments of the Premium Tax Credit

"Account" means the collection and correlation of data related to a specific User's identification, actions, permissions, notifications, updates, or preferences within the Solution that is created at the direction of the User prior to seeking to receive services through the MnHIX.

"Assister" means another User of the Solution who assists or performs actions on behalf of a potential or current person receiving services through the MnHIX. These people can be: Brokers, Navigators, Authorized Representatives or another designee, county or local agency staff, Customer Service Representatives or Exchange staff.

"Authorized Representative" means a person authorized to act on a client's behalf for any of the Minnesota Health Care Programs (MHCP). An Authorized Representative may be designated by the client and may exercise all rights and responsibilities of a client.

"Case" means one or more person(s) who are receiving services from the MnHIX who are linked together by relationship, living arrangement, and/or federal or state program rules.

"Certification" means the HHS' written certification that the Solution meets federal legal requirements for health insurance exchanges under the ACA.

"CHIP" means Children's Health Insurance Program.

"CMS" means the Centers for Medicare and Medicaid Services

"Commerce" means the Minnesota Department of Commerce.

"Critical Deliverables" means those Deliverables identified as critical in Exhibit C.

"CSR" means Cost Sharing Reductions as discussed in section 1402 of the ACA.

"Custom Software Deliverables" means all computer programs and software and all related documentation provided to the State pursuant to this Agreement, either directly or through Contractor, with the exception of Third Party Software licensed to Contractor or State under a separate license agreement. Custom Software Deliverables includes, without limitation, application modules developed to integrate with COTS software provided by Contractor or through a subcontractor under a separate license to Contractor or the State; maintenance updates and bug fixes to such application modules, configuration files, all related documentation describing the procedures for building, compiling, and installing the application modules, including names and versions of the development tools; all software design information (e.g., module names and functionality); and user instructions. Custom Software Deliverables excludes Third Party Software and Pre-Existing Property. To the extent any Pre-Existing Property is included in any Custom Software Deliverable, Contractor or its subcontractors grant State a royalty-free, perpetual, nonexclusive, nontransferable license to use such Pre-Existing Property solely for its internal governmental use consistent with the terms of this Agreement and/or the applicable software license agreement executed between Contractor, or subcontractor, as the case may be and State.

"Decision Support Tool" means specific navigation, filters, or a sub-application available to help a User form information for making a decision.

"Deliverable(s)" means the specific items of Contractor's Work Product that are identified as Deliverables in Exhibit C.

"DHS" means the Minnesota Department of Human Services, which is the State Medicaid and CHIP agency. DHS, Medicaid Agency and Medicaid/CHIP Agency are used interchangeably throughout the Contract and incorporated documents.

"Enterprise" includes any legal entity that, by more than 50%, owns, is owned by, or is under common ownership with Contractor.

"Gap Analysis" means the identification of any differences between the current situation or environment and the future state that is necessary for completion of the Solution and the identification of the tasks required to be completed for that end Solution.

"HHS" means the U.S. Department of Health and Human Services.

"Household" means one or more person(s) on a case who are linked together for purposes of determining eligibility per state and federal eligibility program rules.

"Insurance Affordability Programs" means the following programs: 1.) A State Medicaid program under title XIX of the Social Security Act; 2.) A State Children's Health Insurance Program (CHIP)

under title XXI of the Social Security Act; 3.) A program that makes coverage in a qualified health plan through the MnHIX with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code available to qualified individuals; 4.) A program that makes available coverage in a qualified health plan through the MnHIX with cost-sharing reductions established under section 1402 of the ACA; and 5.) Any State-established Basic Health Program established under section 1331 of the ACA or other program established to serve this population.

"Level of Effort" means the effort required by Contractor to provide the functionalities set forth in Exhibits A and B for the entirety of the Solution or in any single Module.

"MAGI Medicaid" means Medicaid eligibility determined under the Modified Adjusted Gross Income (MAGI) rules under the ACA. MAGI Medicaid eligibility types are described in Exhibit A.

"Maintenance" means those services to be provided by the Contractor to modify the Solution after go-live to correct deficiencies, improve performance, change attributes of the Solution and/or to adapt the Solution to reflect changes in the law, as set forth in Exhibit D.

"MDH" means Minnesota Department of Health.

"Medicaid Agency" See DHS.

"Medicaid/CHIP Agency" See DHS.

"MN Department of Human Services" See DHS.

"MnHIX" means the Minnesota Health Insurance Exchange entity, its business functions, and the operations associated with its functioning as an operating entity.

"Module(s)" means one or more of the seven structural components of the Solution described in Exhibits A and B.

"Navigator" means a qualified individual or entity that performs the duties established under section 1311(i) of the ACA on behalf of the MnHIX.

"Non-MAGI Medicaid" means eligibility determined for the Medicaid program not using the MAGI rules under the Affordable Care Act. Non-MAGI Medicaid eligibility types are listed in the chart included in Exhibit A.

"Other State Healthcare Programs" are other state and federal health care programs administered by the State as described in Exhibit A.

"Premium" means the amount of money charged by an insurance company for coverage.

"Pre-Existing Property" means any and all pre-existing property rights held by Contractor or subcontractor in any materials, products, courseware, etc., which Contractor or subcontractor may use in performing this Agreement and which may be included in a Custom Software Deliverable, including, without limitation, concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques; owned or licensed software or other materials; models (including, without limitation, function, process,

system and data models); templates; the generalized features of the structure, sequence and organization of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems.

"Pre-Screening" means allowing Users to answer a limited set of questions to determine whether they may be able to obtain insurance through the Exchange.

"Project" means the entirety of the work product and effort encompassed by this Contract in order to produce the Solution.

"Provider" means a person who provides health care services. This person can be a doctor, dentist, nurse practitioner, or other professional who performs other similar functions.

"QHP" means Qualified Health Plan as defined under section 1301 of the ACA.

"Screening" means allowing Users to answer more detailed questions to determine whether they are eligible for other health or social services programs.

"SHOP" means the Small Business Health Options Program as defined under the ACA.

"Solution" means the complete collection of all software, equipment, and processes, integrated and functioning together as a turn-key, web-based system for processing data in accordance with the applicable specifications.

"State" means the State of Minnesota, acting through its Commissioner of Commerce.

"Third-Party Software" means software that is owned and/or developed by third parties (which may include subcontractors) and generally distributed or offered for commercial use including without limitation operating system software, tools, utilities, commercial-off-the-shelf (COTS) software, and applications provided on a SaaS basis. A list of Third-Party Software that shall be licensed to the State under separate license agreements shall be listed in a separate Exhibit E, if applicable, and all Third-Party Software license agreements so identified shall extend beyond the termination or expiration of this Contract, subject to the specific terms of such agreements.

"User" means a person who utilizes the Solution and services of the MnHIX. This can be an individual consumer, employee, employer, insurer or Assister.

"Work Product" means all work performed or provided by Contractor in connection with this Agreement, including, without limitation, Custom Software Deliverables, reports, drawings, studies, specifications, estimates, tests, photographs, graphics, mechanical drawings, artwork, computations, data, inventions, discoveries, developments, improvements, ideas, concepts, creative works, innovations, and designs, whether or not patentable and whether or not subject to copyright protection under Title 17 of the United States Code, and all intellectual property rights therein. For avoidance of doubt, Work Product excludes Third Party Software or Pre-Existing Property.

2 Term of Contract

- 2.1 *Effective date:* June 1, 2012, or the date the State obtains all required signatures under Minnesota Statutes section 16C.05, subdivision 2, whichever is later.

The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.

2.2 *Expiration date:* March 31, 2014, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2.3 *Survival of Terms.* The following clauses survive the expiration or cancellation of this Contract: 9. Indemnification; 10. State Audits; 11. Government Data Practices; 12. Intellectual Property; 16. Publicity and Endorsement; 17. Governing Law, Jurisdiction, and Venue; 18. Data Disclosure; 20. Termination; and 29. Sovereign Immunity..

3 Contractor's Duties

3.1 The State and Contractor agree that Certification of the Solution, as defined above, is the objective of this Contract. To assist State in achieving this objective, the Contractor, who is not a state employee, will perform the duties and services specified in sections 3.2 through 3.10 below and in Exhibits A-D (the "Services").

The following Exhibits are attached and incorporated into this Contract:

- Exhibit A – Contractor's Functional Requirements
- Exhibit B – Technical Infrastructure and Architecture Requirements
- Exhibit C – Deliverable Payment Schedule
- Exhibit D – Data Sharing Agreement
- Exhibit E – Third Party Software

The Contractor will perform the Services consistent with requirements set out in the Exhibits A-D. Additional requirements not yet defined and contained herein shall be implemented in accordance with the Change Control process. Additionally, implementation of Contractor's requirements dependent on State provided Equipment and Third Party Software shall not begin until such State provided materials are implemented.

3.2 The Contractor shall provide the Solution which includes all the functions outlined in the seven Modules (as noted below) that are specifically identified in Exhibits A and B:

- Individual Eligibility and Exemption
- Individual Enrollment
- Small Employer Eligibility and Enrollment
- Health Plan Display and Navigator/Broker Certification
- Provider Display
- Fund Aggregation and Payment
- Account Administration

Additionally, and in furtherance of the objective of this Contract stated in 3.1 above, if modifications to the Solution are required for the Solution to be compliant with all requirements of Federal and State law pertaining to the establishment and operation of a Health Insurance Exchange, whether currently in existence or promulgated during the term of this Contract, the additional requirements shall be implemented pursuant to the Change Control process. This clause shall not be construed to require a

Level of Effort that exceeds that currently stated in this Contract as it relates to the implementation of Federal and State law requirements. In doing so, Contractor and State agree that the State shall not be charged to implement changes to the Solution as a result of changes to State or Federal law that have already been implemented by Contractor or its Subcontractors in other states, and can be incorporated into the Solution with no Level of Effort, or shall be charged only in proportion to the Level of Effort specific to the State.

3.3 *Initiation, Planning and Management Duties.* Contractor shall, in accordance with Exhibit A and Exhibit B, coordinate with State for Project initiation, planning and management including:

- (a) Assignment of a Project Manager to work with the State's Project Manager and other third parties providing support services to the State (e.g. IV&V) in connection with the Project as designated by the State, subject to State continuing approval;
- (b) Participation in a Project Kickoff Meeting convened by the State Project Manager to initiate Project and communicate key objectives, roles, responsibilities and activities consistent with requirements set out in the Exhibits A-D;
- (c) Issues Management Process: Established by the Contractor and approved by the State, the Contractor shall develop an Issues Management Plan for addressing project issues, including an issues document or log that will contain details for each issue including issue identification, issue description, to whom assigned, date assigned, due date, priority, resolution date and resolution details. The Issues Management Plan shall include a method for the parties to register exceptions and disagreement over listed issues and the parties shall comply with such approved Issues Management Plan. The Contractor shall update the issues log and provide it with a weekly project status report which is subject to review and comment by the State;
- (d) Communication Plan: Established by the Contractor and approved by the State, the Contractor shall develop a Communication Plan that describes the process for communications during the Project, including recurring meetings with State Project Manager, communications with stakeholders, communication methods and documentation and Contractor shall comply with such Approved Communication Plan;
- (e) Risk Management Plan: Established by the Contractor and approved by the State, the Contractor shall develop and define a Risk Mitigation Plan which defines the risks associated with the Project and categorizes these risks as business or technical in nature and Contractor shall comply with any and all directives arising from such Approved Risk Management Plan; and
- (f) Contractor shall develop a Project Plan that includes vendor staffing plan with key staff identified, staffing contingency plan, state staffing estimates, work breakdown structure, schedule, and deliverables for the Solution in accordance with the requirements of Exhibit A and Exhibit B and submit it to the State for approval.

3.4 *Federal Establishment and Certification Review Duties.* Contractor shall draft and complete all required documentation for federal review and Certification requested by State and subject to State approval as set out in Exhibit A and Exhibit B. Contractor shall comply with all reasonable requests for attendance and participation at all meetings relevant to such review. Participation in these meeting shall include, but is not limited to the following duties:

- (a) Produce and demonstrate the prototypes previously delivered to the State;
- (b) Discuss process flows; and
- (c) Answer questions about the Contractor's work consistent with this Contract and development of the prototypes.

Anticipated federal meetings include, but are not limited to, a December 2012 certification review and a June 2013 implementation review.

- 3.5 **Analysis/Definition Duties.** Contractor shall, in accordance with Exhibit A and Exhibit B and subject to State approval:
- (a) Develop and submit to the State requirements documents for the Solution; including functional, technical and integration requirements. Contractor's requirements document shall be subject to State's approval in accordance with Section 25;
 - (b) Conduct business requirements sessions for requirements for the Solution. Business requirements sessions shall be based upon the requirements contained within Exhibit A and Exhibit B.
 - (c) Document business requirements findings, conduct Gap Analysis, prepare high level process flow documents, develop test use cases, and deliver Gap Analysis to State.
- 3.6 **Design Phase Duties.** Contractor shall, during the design phase, in accordance with Exhibit A and Exhibit B, and subject to State approval in accordance with Section 25:
- (a) Develop functional design documents based on joint application design sessions, process flows, and detailed test cases;
 - (b) Develop technical design documents for the Solution, in coordination with the State and, if applicable, other vendors providing services to the State in connection with the Project, in order to finalize technical architecture, database design, development components, interface/integration mapping and test plans;
 - (c) Present design documents for the Solution to the State project team for State approval to verify accuracy and completeness.
- 3.7 **Development Phase Duties.** Contractor shall, during the development phase, in accordance with Exhibit A and Exhibit B and subject to State approval in accordance with Section 25:
- (a) Complete coding/configuration of the Solution based on functional and technical designs and develop testing plans based on these designs which meet the requirements contained in Exhibit A and Exhibit B of this Contract.
- 3.8 **Test Phase Duties.** Contractor shall, during the test phase, in accordance with Exhibit A and Exhibit B and subject to State approval in accordance with Section 25:
- (a) Develop and conduct systems testing plan;
 - (b) Develop and conduct Integration testing;
 - (c) Develop and conduct load testing; and
 - (d) Conduct user acceptance test cases, document, resolve issues with and deliver test results to State.
- 3.9 **Deployment Phase Duties.** Contractor shall, during deployment phase, in accordance with and subject to the requirements contained in Exhibit A and Exhibit B and subject to State approval in accordance with Section 25, deploy Module production in collaboration with the State and in doing so:
- (a) Contractor shall deliver User and Technical Manuals to the State;
 - (b) Contractor will execute Knowledge Transfer to State technical and program personnel; and
 - (c) Contractor will deliver on a mutually agreed upon schedule implementation status reports summarizing work performed and problems resolved to State.
- 3.10 **Identification of Efficiencies.** To the extent that Contractor, has entered into other contracts with any other state, exchange, or the Federal Government, relating to the design, development, implementation, or

operation of a health benefit exchange as described in the Section 1311 of the ACA to which the requirements of 45 C.F.R. 95 and 45 C.F.R. 92 apply, Contractor will proactively identify for, review for, discuss with, and submit recommendations to the State regarding reuse of work from these other contracts or other shared efforts with these third-parties that could lead to efficiencies in accomplishing the specific requirements of or the objective of this Contract.

3.11 No terms or conditions of the State's Request for Proposal or the Contractor's Proposal in Response to the Request for Proposal will be construed to modify, diminish or derogate the terms and conditions of this Contract.

3.12 In the event of a change in State or Federal requirements or other changes in the requirements set out on Exhibit A and B the State may desire to substitute requirements with new or changed requirements. The parties shall agree upon a methodology to determine the Level of Effort for (i) the requirements to be deprecated and (ii) the substituted requirements, in order to determine the Level of Effort of the deprecated and added requirements. In the event the Level of Effort for the substituted requirements does not exceed the Level of Effort of the deprecated requirements the parties shall enter into a no-cost change order. In the event the substituted requirements require a Level of Effort in excess of the deprecated requirements, the parties shall utilize the Change Control Process to add the additional scope to the Contract. The parties shall first enter into a Change Order to develop the requirements and estimate the Level of Effort for the implementation of the new requirements. Upon approval of the State, the parties will enter into a Change Order to implement the new requirements. Regardless of whether the State elects to continue with the substituted requirements, the State shall compensate the Contractor for the hours spent on elaboration of such requirements.

4 Time

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence for the submission of only those Deliverables specifically denoted as such in Exhibit C.

5 Consideration and Payment

5.1 *Consideration.* The State will pay for all Services performed by the Contractor under this Contract as follows:

(A) *Compensation.* The Contractor will be paid in accordance with the terms and schedule of Exhibit C.

(B) *Travel Expenses.* Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Contract will not exceed \$0.00.

(C) *Total Obligation.* The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed \$41,246,226

(D) *Future Pricing for Support and Maintenance Costs.* If State elects to amend this Contract to include future ongoing maintenance and support, the annual fees for this maintenance and support shall not exceed the amounts identified as "Annual Maintenance" in Exhibit C.

5.2. *Payment.*

(A) *Invoices.* The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the Services actually performed and the State's Authorized Representative accepts the invoiced Services. Invoices must be submitted timely and according to the schedule found in Exhibit C.

(B) *Retainage.* Under Minnesota Statutes Section 16C.08, subdivision 5(b), no more than 90% of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by the State's agency head. The balance due, including an additional 5% withholding for timely completion of the project, will be paid when the State's agency head determines upon final acceptance that Contractor has met the critical milestones necessary for the State to receive federal funds.

(C) *Federal funds.* Payments under this Contract will be made from federal funds obtained by the State through HHS section 1311 CDFA number 93.525 of the Patient Protection and Affordable Care Act of 2010. The Contractor is responsible for compliance with all federal requirements imposed on these funds including reporting requirements under the Federal Funding and Accountability and Transparency Act of 2006. The Contractor accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

6 **Conditions of Payment**

All Services provided by the Contractor under this Contract must be performed in conformance to the requirements set out in Exhibits A-D. The Contractor will not receive payment for work found by the State to be performed in violation of applicable federal, state, or local law.

7 **Authorized Representatives**

The State's Authorized Representative is Peter Frank, Information Project Director, MN Health Insurance Exchange, 85-7th Pl. E. St. Paul, MN 55101, 651-296-6585, or his successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the Services provided under this Contract. If the Services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is Leslie Wolfe, President, 4000 S-IH 35, Austin, TX 78704, 512-533-5315, or her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

8 **Assignment, Amendments, Waiver, and Contract Complete**

8.1 *Assignment.* The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office. Notwithstanding the foregoing, Contractor may assign this Contract without obtaining the State's consent, provided such assignment is to an affiliated Enterprise. Notwithstanding the foregoing, Contractor shall provide State with written notice 30 days prior to the effective date of such assignment. Nothing in this Contract may be construed to limit the State's ability to assign or transfer any rights or obligations under this Contract to any other Authorized Representative of the State or quasi-governmental agency or as required by law.

- 8.2 *Change in Control.* State may terminate this Contract in accordance with the terms of Section 19.1 in the event that a majority of Contractor's assets are purchased, transferred or otherwise merged with a third party.
- 8.3 *Amendments.* Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.
- 8.4 *Waiver.* If the State fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.
- 8.5 *Contract Complete.* This Contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

9 Liability

9.1 *Indemnity.* In the performance of this Contract by Contractor, or Contractor's agents or employees, the Contractor must defend, with the approval of the Minnesota Attorney General's Office consistent with Minnesota Statute section 8.06, indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Contractor's:

- 1) Intentional, willful, or grossly negligent acts or omissions; or
- 2) Actions related to an unauthorized release or disclosure of Protected Information as defined in Exhibit D; or
- 3) Any bodily injury or death.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligation under this Contract.

In the event of a liability arising from a breach of an obligation under the Contract by Contractor or liability arising from indemnification, the Contractor will be liable to the State only for the proportionate amount of the liability attributable to breach by Contractor or Contractor's agents or employees.

In addition, in the event of liability arising from a breach of an obligation under the Contract, the State shall be listed as an intended third-party beneficiary to Contractor's subcontract agreements whereby subcontractors shall be liable to the State for the proportionate amount of the liability attributable to breach by each subcontractor or subcontractor's agents or employees.

In the event that Contractor fails to provide the intended third-party beneficiary requirement in its subcontract agreements, Contractor shall be liable for the whole sum of such liability, as set forth above.

9.2 Limitation of Liability.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS CONTRACT, NEITHER PARTY NOR ITS SUBCONTRACTORS, CONTRACTORS OR THEIR RESPECTIVE PERSONNEL, SHALL BE LIABLE FOR ANY LOSS OF USE, DATA, GOODWILL, FUNDING, REVENUES OR PROFITS (WHETHER OR NOT DEEMED TO CONSTITUTE A DIRECT CLAIM), OR FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OR EXPENSES (OR ANY COMPARABLE CATEGORY OR FORM OF SUCH DAMAGES, HOWSOEVER CHARACTERIZED) RELATING TO THIS CONTRACT OR THE SERVICES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND

EVEN IF FORESEEABLE OR IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Except as specifically set forth in this Contract, Contractor and Contractor's subcontractors' direct aggregate liability for any claims, liabilities, expenses or damages related to section 9.1 shall not exceed \$ \$25 million. Contractor's liability relating to the Services ("Claims") shall not exceed the lesser of fees actually paid to Contractor or \$10 Million during the Term. This limitation applies solely to the direct liability of Contractor for damages related to the Claims and shall not be construed to limit the liability of the Contractor's subcontractors providing third-party intended beneficiary coverage to the State for the services rendered by such subcontractors as set out in the applicable subcontractor's statement of work (the "Subcontractor Services"). The limitation of liability for Subcontractor Services for each Contractor subcontractor shall be equal to the fees paid to such subcontractor during the Term.

10 Audit Requirements

10.1 Under Minnesota Statute § 16C.05, subdivision 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

10.2 All such records described in section 10.1 shall be subject at reasonable times and upon prior written notice to Contractor to examination, inspection, copying, or audit by personnel so authorized by the State, by state and federal officials so authorized by law, rule, regulation or contract, when applicable, during the term and during the six year period thereafter. The State's personnel shall be accompanied by Contractor personnel at all times during any such examination, inspection, review or audit. Contractor will make no charges for Services rendered in connection with an audit requested by the State. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

10.3 In accordance with 42 C.F.R. 434.6(a) (5), the State and/or HHS may evaluate through inspection or other means the quality, appropriateness, and timeliness of Services performed under this Contract.

10.2 Compliance with Single Audit Act. All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act, OMB Circular A-133. Contractor certifies it will comply with the single Audit Act Circular A-133, if applicable. Failure to comply with these requirements could result in forfeiture of federal funds.

11 Government Data Practices

11.1. *Government Data Practices.* The Contractor and State must comply with the Minnesota Government Data Practices Act, Minnesota Statute Ch. 13, (or, if the State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minnesota Statute § 13.08 apply to the release of the data governed by the Minnesota Government Data Practices Act, Minnesota Statutes, Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the State, and consult with the agency as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

12. Intellectual Property Rights.

12.1 Contractor agrees that all Work Product, and all rights, including copyright, patent, trademark, trade secret, publicity, moral rights, and any other intellectual property or equivalent rights, worldwide, are and shall be the State's sole and exclusive property. To the extent necessary to give legal effect to such ownership, Contractor agrees to assign and hereby assigns to the State all right, title, and interest in all Work Product, including any right, title, and interest in any Work Product that vests in Contractor by virtue of assignment of such right, title, and interest to Contractor by any Contractor personnel. Contractor shall not affix (or permit any third party to affix) any restrictive markings upon any Work Product, except as expressly directed or otherwise authorized in writing by the State, and, if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such markings.

12.2 The State hereby grants Contractor a non-exclusive, royalty free, irrevocable, fully paid-up, and sub-licensable license to use, execute, reproduce, display, perform, sublicense, distribute and prepare derivative works of Work Product, as that term is defined herein (the "License Back"). This License Back is granted without warranties of any kind. For avoidance of doubt, Contractor may assign, transfer, or sub-license its rights under this License Back, in whole or in part, to its subcontractors, subject to notice to and consent of the State, such consent not to be unreasonably withheld or delayed. The State hereby consents to Contractor's sub-license of its rights under this License Back to Curam Software Inc., Connecture, Inc., and Consumer Health Technologies (the "Subcontractors"), for all Work Product created under each Subcontractors' individual subcontract with Contractor for the Solution.

12.3 Contractor and its subcontractors retain ownership of all intellectual property rights in any Third Party Software licensed under a separate software license agreement in accordance with section 28.6 of this Contract and any Pre-Existing Property.

12.4 With respect to Custom Software Deliverable and Work Product, in accordance with 45 C.F.R. 95.617 and 45 C.F.R. 92.34, all appropriate State and federal agencies, including but not limited to Department of Commerce and CMS, will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for State or federal government purposes software, modifications, and documentation designed, developed or installed with Federal Financial Participation under 45 CFR Part 95, subpart F or Federal Grant Funding under 45 CFR Part 92. The Contractor must provide the State with a working electronic copy of the software (including object and source code) with the right to distribute it to others for Federal Purposes at the State's request for this purpose throughout the term of this contract.

12.5 Contractor provides no indemnification for software delivered hereunder. However, the State shall be listed as a third-party beneficiary to Contractor's subcontract agreements and Contractor shall obtain the following indemnification of the State by its subcontractors:

12.5.1 Subcontractor shall defend, with the approval of the Minnesota Attorney General's Office consistent with Minnesota Statute section 8.06, indemnify and hold the State, its employees,

successors and permitted assigns, harmless from and against all damages attributable to third party claims for: infringement or misappropriation of any U.S. patent known to subcontractor, trade secret, copyright or other intellectual property rights by a Deliverable or any part thereof under the Prime Contract; except to the extent that such infringement or unauthorized use arises from, or could have been avoided except for (i) the indemnified party's modification of the Deliverable or use thereof in a manner not contemplated by the Contract, (ii) the failure of the indemnified party to use any corrections or modifications made available by subcontractor, (iii) information, materials, instructions or specifications provided by or on behalf of the indemnified party, or (iv) the use of the Deliverable in combination with any product or data not provided by subcontractor whether or not with subcontractor's consent.

12.5.2 If any Deliverable or part thereof (hereinafter, an "item") is, or in subcontractor's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, subcontractor will, in addition to indemnifying the State, have the right to promptly take, at its option, the following actions at no additional charge to the State: (i) secure the right to continue using the item; (ii) if (i) is not reasonably available to subcontractor, replace or modify the item to make it non-infringing, provided that the replacement or modification will not materially degrade performance or quality of the Services and performs substantially the same or equivalent function with the same or equivalent operating characteristics; or (iii) if (ii) is not reasonably available to subcontractor, remove the item from the Services and subcontractor shall refund to the State the fees paid by the State to subcontractor for such infringing item. The foregoing provisions of this section constitute the sole and exclusive remedy of the indemnified parties, and the sole and exclusive obligation of subcontractor, relating to a claim that any item infringes any patent, copyright or other intellectual property right of a third party.

12.5.3 Promptly after receipt of any written claim or notice of any action giving rise to a claim for indemnification ("Indemnified Claim"), the indemnified party shall notify the other party and provide copies of such Indemnified Claim and any documents relating to same in its possession. No failure to so notify the other party shall relieve that party of its indemnification obligations except to the extent, but only to the extent, the failure or delay is prejudicial. The party responsible for indemnification hereunder shall have sole control over the defense and any settlement of such Indemnified Claim; provided, however, that (i) the other party shall be entitled to participate in the defense of such Indemnified Claim and to employ counsel at its own expense to assist in the handling of such Indemnified Claim, and (ii) the party responsible for indemnification shall obtain the prior written approval of the indemnified party before entering into any settlement of such Indemnified Claim only if such settlement (i) requires an indemnified party to admit to liability or (ii) imposes any liability on the indemnified party other than the payment of money damages for which the indemnifying party shall be responsible to pay pursuant to this section.

13 Insurance

- A. Contractor shall not commence work under the Contract until it has obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the Contract.
- B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

1. **Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:
 - \$100,000 – Bodily Injury by Disease per employee
 - \$500,000 – Bodily Injury by Disease aggregate
 - \$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the Contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

2. **Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the Contract. Insurance **minimum** limits are as follows:
 - \$2,000,000 – per occurrence
 - \$2,000,000 – annual aggregate
 - \$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- State of Minnesota named as an Additional Insured

3. **Commercial Automobile Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this Contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:
 - \$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

- Owned, Hired, and Non-owned Automobile

4. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance**

This policy will provide coverage for all claims the Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the Contract.

Contractor is required to carry the following minimum limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

C. Additional Insurance Conditions:

Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this Contract;

- Contractor's policy(ies) and Certificate(s) of Insurance shall contain a provision that coverage afforded under the policy(ies) shall not be cancelled without at least thirty (30) days advanced written notice to the State of Minnesota;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4 above;
- Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

D. The State reserves the right to immediately terminate the Contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

E. The Contractor is required to submit Certificates of Insurance acceptable to the State of MN as evidence of insurance coverage requirements prior to commencing work under the Contract.

14 Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions

Contractor certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material

representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

15 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

16 Publicity and Endorsement

A. *Publicity.* Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or Services provided resulting from this Contract.

B. *Endorsement.* The Contractor must not claim that the State endorses its products or services.

17 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

18 Data Disclosure

Under Minnesota Statute section 270C.65, Subdivision 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies and state personnel involved in the payment of State obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

19 Subcontractors

19.1 As required by Minnesota Statute section 16A.1245, the Contractor must pay all subcontractors, less any retainage as set out herein.

19.2 As required under 42 C.F.R. 434.6, any subcontracts under this Contract must be in writing and require compliance with any State or federal law applicable to the Services or activity delegated under this Contract. Additionally, no subcontract terminates the legal responsibility of Contractor to the State to assure that all duties under the Contract are carried out.

20 Termination

20.1 *Termination by the State.* The State or commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for Services satisfactorily performed.

20.2 *Termination for Insufficient Funding.* The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be

continued at a level sufficient to allow for the payment of the Services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any Services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for Services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

21 Minnesota Statute § 181.59

The vendor will comply with the provisions of Minnesota Statute § 181.59 which require:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this Contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the Contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Contract.

22 Affirmative Action Requirements for Contracts in Excess of \$100,000 and if the Contractor has More than 40 Full-time Employees in Minnesota or its Principal Place of Business

The State intends to carry out its responsibility for requiring affirmative action by its Contractors.

22.1 Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minnesota Statute § 363A.36 and Minnesota Rule Parts 5000.3400-5000.3600. A contractor covered by Minnesota Statute § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

22.2 Minnesota Statute § 363A.36. Minnesota Statute § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

22.3 Minnesota Rule 5000.3400-5000.3600.

(A) *General.* Minnesota Rule 5000.3400-5000.3600 implement Minnesota Statute § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of

affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota Rule 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

(B) *Disabled Workers.* The Contractor must comply with the following affirmative action requirements for disabled workers.

(1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

(C) *Consequences.* The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.

(D) *Certification.* The Contractor hereby certifies that it is in compliance with the requirements of Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400-5000.3600 and is aware of the consequences for noncompliance

23 E-Verify Certification (In accordance with Minn. Stat. §16C.075)

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mnnd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

24 THIS SECTION INTENTIONALLY LEFT BLANK

25 Approval of Deliverables

- A. The State shall complete its review of each Deliverable identified in Exhibit A within the time period for review set forth in the Project Plan (or if no such period is set forth then within ten (10) business days) and at such time shall provide Contractor with (a) approval of the Deliverable or (b) a written statement, as provided below, of the deficiencies preventing approval. Each Deliverable shall be accepted by the State if finds that such Deliverable complies, in all material respects, with the requirements as set forth in Exhibit A.
- B. In the event of the State's rejection of a Deliverable, the State shall provide one consolidated written statement (the "Deliverable Cure Notice") that identifies in reasonable detail all material deficiencies with respect to the Deliverable. Contractor shall then have the period of time for corrections set forth in the Project Plan (or if no such period is set forth then within twenty (20) calendar days) to complete all such corrective actions or changes in order for such Deliverable to conform in all material respects with the requirements therefor set forth in Exhibit A and shall then resubmit the Deliverable to the State for approval.
- C. The State shall have five (5) business days to complete a review of the corrective changes made to the resubmitted Deliverable in response to the Deliverable Cure Notice and, within such period, notify Contractor in writing of acceptance or rejection. The State's review and approval of such corrected Deliverable shall be solely for the purpose of determining that the required corrections have been made to bring the identified deficiencies into compliance in all material respects with the items set out in the Deliverable Cure Notice.
- D. If the State fails to approve or reject a Deliverable within the periods of time set forth in Section 25.A or Section 25.C, then Contractor shall promptly issue a written reminder to the State's Authorized Representative, notifying the State in writing that no such notice was received with respect to such Deliverable. If, within two (2) business days of the date of Contractor's written reminder, Contractor does not receive a written approval or rejection of such Deliverable, the Deliverable will be deemed approved by the State.
- E. If any Deliverables have been approved by the State pursuant to the terms of this Contract the Contractor shall be entitled to rely on such approval.
- F. The requested party will respond to submissions of documents requiring approval (the "Approval Documents") by the requesting party with (i) information, comments or questions regarding the Approval Documents prior to the deadline for information, questions or comments contained within the Approval Documents, and (ii) assuming the requesting party has responded to the requested party's comments and questions, a signed Approval Document ("Signoff") within the date called for in such Approval Document (the "Signoff Request Date"). The requesting party shall provide the requested party with a reasonable time, but in no event less than 3 business days, in which to review and comment on any Approval Document requiring Signoff. If requesting party has responded to requested party's comments and questions from an objectively reasonable perspective and the requested party fails to provide Signoff by the Signoff Request Date, requesting party shall be permitted to take one of the following actions: (a) if requesting party believes, based upon previous documented communication with the requested party, that it has enough information to take the action in question, it shall take the

action based on the information previously provided; or (b) if requesting party has insufficient information to take the action, the requested party shall be deemed to have waived action requested, provided, however, that the requested party shall not be permitted to take either of the actions set forth in (a) or (b) above until it has provided the requested Project Director or their designee with at least 24 hours (which such hours must be during a Business Day) written notice (e-mail is sufficient) that the requested party has failed to respond to the Approval Document and it shall describe the action it intends to take. If the requested Project Manager responds to requesting party within such 24 hour period with the necessary Signoff or information, or the parties agree to a mutually agreed to plan to resolve the outstanding issues, requesting party shall not be permitted to take such action.

Whenever approval is required by a party herein, such approval shall not be unreasonably withheld.

26 Change Control Process

26.1 Express written approval of the State must be obtained prior to any changes in the Project. A change to the Project is defined as a change involving tasks not initially included in Contractor's duties or reasonably implied therein, or anticipated by the parties to the Contract, and which may require a change in cost, a change in the Project schedule, a change in Level of Effort, or other change to the Project, including but not limited to a change in functionality, a change related to third-party software, or a change in system security.

26.2 Prior to the approval of any change the following must occur:

26.2.1 A change is identified when either the State or the Contractor believes a change is not otherwise provided for in this Contract;

26.2.2 The State and the Contractor shall investigate and mutually agree whether a change is required;

26.2.3 If the State and the Contractor reach agreement that the issue necessitates a change to the Project, the Contractor shall provide the State with an estimate of the time and cost for the change, and if determined to be merited by the State, an estimate for the time and cost for the Contractor to conduct an Impact Risk Analysis;

26.2.4 Upon State's determination that an Impact Risk Analysis is merited and approval of the cost estimate, the Contractor will conduct and provide the State with an Impact Risk Analysis;

26.2.5 Upon receipt of an estimate of time and cost to for the change, and, if the State has so requested, upon receipt of the Impact Risk Analysis, the State will determine whether it will issue a Change Request;

26.2.6 If the State issues a Change Request, the Contractor will provide the State with a bid on a fixed-price basis for the Change Request;

26.2.7 The State will review and formally accept or reject the Contractor's bid;

26.2.8 If the State accepts the Contractor's bid, the parties shall execute a Change Order,

- 26.3 If the parties are unable to reach an agreement during any step of the Change Control Process, the State's authorized representative and the Contractor's authorized representative will meet to determine further action.
- 26.4 During the Change Control Process, both Contractor and State shall continue to perform their duties under the Contract which are not affected by the Change Control Process, but shall not be obligated to perform additional duties contemplated in any Change Control or Change Order currently under consideration. Should a Party elect to perform work in furtherance of an unapproved Change Order, said Party is responsible for its own costs associated therein in the event that a Change Order is not subsequently and mutually executed by the Parties related to the work performed.
- 26.5 If the State fails to timely perform an obligation under this Contract and Contractor demonstrates that such delay materially affects scope, schedule or cost of performing the Services, the parties shall execute an appropriate Change Order in accordance with the provisions of this section to account for such delay. Such Change Order will address appropriate reimbursement or other consideration for reasonable, necessary, actual and substantiated costs paid or incurred by Contractor that were directly caused by the State delay.

27 Changing Government Programs

- 27.1 The parties acknowledge that the government programs supported by this Contract will be subject to continuous change during the term of this Contract. Contractor has provided for or will provide for adequate resources to reasonably accommodate such changes, subject to the Change Order process of Section 26 above.
- 27.2 The parties also acknowledge that Contractor was selected, in part, because of its expertise, experience, and knowledge concerning applicable federal and/or State laws, regulations, policies, or guidelines that affect the performance of the Services and the Solution.
- 27.3 In keeping with the State's reliance on Contractor's knowledge, experience and expertise, Contractor will make best efforts to identify changes in applicable legislative or regulatory amendments and seek guidance from State on the applicability of those changes to the Solution. The State will ultimately determine appropriate actions to take based on federal changes.
- 27.4 In the ordinary course of business, if State becomes aware of any material changes in applicable law, regulation, policy, or guidelines affecting the Contract, State will promptly notify Contractor of the changes.
- 27.5 *Changes Required by Law.* If federal or state laws, rules, regulations, policies or guidelines are adopted, promulgated, judicially interpreted or changed, the effect of which is to alter the ability of either party to fulfill its obligations under this Contract, the parties will promptly and in good faith negotiate appropriate modifications or alterations to the Contract and any appropriate Change Orders.
- 27.6 *Noncompliance.* Contractor will be responsible for compliance with the laws, regulations, policies and guidelines applicable to Contractor in its performance of the Services or Deliverables that are to be provided or that have been provided by Contractor, its subcontractors or agents.

28. Equipment and Third-Party Software

- 28.1. The State shall provide the development, test and production environments necessary for this implementation. The current platform is identified in Section III of Exhibit B. The documentation of this platform shall be updated by the State, with assistance from the Contractor, as additional equipment and third-party software are obtained under sections 28.2 or 28.3.
- 28.2. Except as otherwise stated herein, the State shall enter into direct agreements with equipment manufacturers and third-party software licensors for equipment and third-party software necessary for the Contract.
- 28.3. The State may request that the Contractor enter into direct agreements with equipment manufacturers and third-party software licensors for equipment or third-party software necessary for the Contract through the Change Order Process.
- 28.4. MN.IT Services shall be the single point of contact with third-party software licensors and equipment manufacturers for equipment and software system integration, maintenance and operations during the term of the Contract.
- 28.5. Contractor, in coordination with MN.IT Services@DHS staff, shall assist in the installation of any equipment described in sections 28.2 or 28.3 at the site(s) and shall assist in the install of any third-party software described in sections 28.2 or 28.3 on any applicable equipment. To the extent that this assistance significantly exceeds the Level of Effort included in the fixed price determined by the parties for the project, the State may complete such installation without the assistance of Contractor, or may use the Change Order Process to obtain additional installation Services from the Contractor.
- 28.6. Prior to utilizing any third-party Software product that may be included as part of a software Deliverable to the State or obtained on behalf of the State under 28.3 and that will require the State to execute a license agreement from the licensor, Contractor shall provide to the State copies of any applicable license agreement from the licensor of the Third-Party Software to allow the State to pre-approve such license agreement.
- 28.7. During the project, parties shall maintain any and all Third-Party Software products at their most current version or no more than one version back from the most current version (for Third-Party Software products for which Contractor is responsible under this Contract, this will be at no additional cost to the State), provided that such Third-Party Software version upgrades can be installed and maintained with the staff assigned to the Maintenance. However, Contractor shall not maintain any Third-Party Software versions, including one version back, if any such version would prevent the State from using any functions, in whole or in part, or would cause deficiencies in the System. If implementation of an upgrade to a Third-Party Software product requires personnel in addition to the staff assigned to the Maintenance, the State and Contractor shall discuss whether to implement such an upgrade and, if mutually agreed upon in writing, the additional charges, if any, to be paid by the State for such upgrade.

29. **Sovereign Immunity**

The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by the State of any immunities from suit or from liability that the State may have by operation of law.

30. **State Responsibilities**

In furtherance of the State's responsibilities as set forth in Exhibits A-D, the State shall cooperate with Contractor in the performance by Contractor of the Services, including (i) providing Contractor with reasonable working space, equipment and facilities and timely access to data, information, and personnel of the State; (ii) providing experienced and qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent and timely fashion; (iii) providing a stable, fully functional system infrastructure environment which will support the Services and allow Contractor and the State to work productively; and (iv) promptly notifying Contractor of any issues, concerns or disputes with respect to the Services. The State shall be solely responsible for, among other things (a) the performance of its personnel and agents, (b) the accuracy and completeness of all data and information provided to Contractor for purposes of the performance of the Services, (c) making all management decisions and performing all management functions, (d) designating a competent management member to oversee the Services, (e) evaluating the adequacy and results of the Services, and (f) accepting responsibility for the results of the Services. Contractor's performance is dependent on the State's timely and effective satisfaction of the State's responsibilities under this Contract and timely decisions and approvals of the State in connection with the Services. Without waiving Contractor's rights, Contractor's failure to properly perform its obligations under this Contract will be excused if and to the extent that such failure by Contractor would not have occurred but for the State's failure to perform its responsibilities required under this Contract, and Contractor provides the State with reasonable notice of such nonperformance and uses commercially reasonable efforts to perform where practical notwithstanding the State's failure to perform. The State agrees to reimburse Contractor for Contractor's additional charges and expenses for such efforts attributable to such the State failure.

31. **Warranties**

31.1 *Items Covered by Warranty.* Contractor warrants that it performs each Contractor service using reasonable care and skill and according to the current description contained in Exhibit A. State agrees to provide timely written notice of any failure to comply with this warranty so that Contractor can take corrective action, but failure to provide this written notice shall not constitute a waiver of any rights under the warranty.

EXCEPT AS OTHERWISE EXPRESSLY CONTAINED IN THIS CONTRACT, THIS WARRANTY IS STATE'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NON-INFRINGEMENT.

31.2 *Items Not Covered by Warranty.* Contractor does not warrant uninterrupted or error-free operation of any Material or that Contractor will correct all defects. Services do not include provision of any update, revisions or error correction for Materials, and (ii) Contractor and its subcontractors provide Materials, WITHOUT WARRANTIES OF ANY KIND. However, non-Contractor manufacturers, developers, suppliers, or publishers may provide their own warranties to State.

31.3 *Limitation.* The warranties contained herein shall not be interpreted to modify or expand the warranties provided by subcontractors pursuant to the terms of separate license agreements.

32. Dispute Resolution

In the event of a dispute between Parties related to contract responsibilities, Parties will work in good faith to seek a fair and prompt negotiated resolution within ten (10) business days of the initial notice of a dispute ("Dispute") by either party. During that time, each party must submit to the other a statement of the issues giving rise to the Dispute and proposed terms of resolving said dispute. If the dispute has not been resolved after ten (10) business days, either party may escalate the issue to each party's respective senior leadership.

Nothing herein shall prevent either party from seeking a preliminary or permanent injunction to preserve the status quo or prevent irreparable harm during the negotiation process or diminish the respective rights of the parties to pursue any and all remedies available in law and/or equity at any time.

1. STATE ENCUMBRANCE VERIFICATION

Indemnitor certifies that funds have been encumbered as required by Minnesota Statute §§ 16A.75 and 16C.05.

Signature: [Signature]

Date: 6/29/12

Contract No. 488 24
PO# 1779

2. CONTRACTOR

The Contractor certifies that the appropriate person(s) have executed the contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]

Title: Sen Vice President & Deputy General Counsel

Date: 7/13/12

By: Bruce Perkins

Title: _____

Date: _____

3. STATE AGENCY

By: [Signature]
(with delegated authority)

Title: Deputy Commissioner

Date: JULY 13, 2012

4. COMMISSIONER OF ADMINISTRATION

As delegated to the Internal Management Division

By: [Signature]

Title: Negotiations Manager

Date: 7/14/12

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